

A simplified guide to freedom of expression and assembly in Uganda

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What you need to  
**know** about **your**  
expression and  
assembly **freedoms.**

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A publication of Chapter Four Uganda

 **chapter  
four**  
PROTECTING CIVIL LIBERTIES &  
PROMOTING HUMAN RIGHTS FOR ALL.

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We also extend special thanks to our partners and the Chapter Four department team for the timely publication of this booklet ahead of Uganda 2016 general elections as part of the commitment to empower the community with legal knowledge on how to exercise freedoms of expression and assembly in Uganda.

This abridged handbook is dedicated to victims of rights violations in Uganda. We commit to strive to protect your civil rights and promote human rights for all.

# General Introduction

This handy booklet simplifies the issues around freedom of expression and assembly in Uganda. It summarizes the freedoms as provided in national and international human rights instruments, as well as the law seeking to enforce them. It also highlights the gaps in enforcement of these rights, specifically focusing on laws that have a potential to limit the enjoyment of these rights. The purpose is to enable the reader understand the rights and freedoms while at the same time appreciating the existing limits in enjoyment of these rights in Uganda.

The reader will be able to understand the enjoyment of freedom of association and speech and the limits within which such freedom can be exercised. The booklet highlights the laws limiting the enjoyment of these two freedoms by either setting some requirements to be met in enjoyment of the right or stating crimes that can be committed in the process of enjoying these rights.

It should be noted that some of the limitations go beyond what is legally expected in a free democratic society; however, the fact that these laws are still in force in Uganda, creates the importance of highlighting them for the reader to understand and avoid falling prey to these undemocratic legal provisions. The booklet will highlight the need to advocate for change of these laws through amendments or court petitions, to bring them inline with constitutional requirements.

It is hoped that this simplified booklet can help the reader understand the dos and don'ts of freedoms of expression and assembly in Uganda and will help them in advocating for the enforcement of these rights.

# Freedom of Expression in Uganda

## 1.1 What is freedom of expression?

Freedom of expression is the right for one to express his or her ideas or opinions freely through speech, writing and other forms of media such as radio, TV, Internet and social media.

Freedom of expression takes three aspects, which include:

1. The right to seek;
2. The right to receive; and
3. The right to impart information.

The three go hand in hand in promoting freedom of information and the cycle is not complete if one of the aspects is not respected or enforced.

Freedom of expression is at the core of every democratic process in society. Every person should have a freedom to express him or her-self freely; for this enables individuals in society to participate in matters that

concern them. Such participation in decision-making promotes democracy.

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<sup>1</sup> Charles Onyango Obbo, Andrew Mwenda Vs. Ag Constitutional Appeal no 2 of 2002 [2004] UGCA 1.

## 1.2 Is there some kind of foundation/basis for this right? Where does it come from?

Freedom of expression is protected at the national and international level. At the international level, Uganda has adopted international instruments that require it to promote freedom of expression. These include the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) <sup>2</sup>

At the regional level, freedom of expression is protected under the African Charter for Human and Peoples' Rights (ACHPR) – also known as the African Charter. The Charter provides under Article 9 that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

From the African Charter, it can be noted that it subjects the enjoyment of this right to the law; that is, the freedom of expression according to the African Charter should be exercised within the limits of the law. This has been criticized for allowing states to substantially limit the enjoyment of this right using laws, which has been common in many African countries.

At the national level, the right to freedom of expression is guaranteed under Article 29 of the Constitution of Uganda 1995. It provides that every person has a right to:

1. Freedom of speech and expression which shall include freedom of the press and other media;
2. Freedom of thought, conscience and belief, which shall include academic freedom in institutions of learning.

Much as the Constitution of Uganda and other human rights instruments provide for the freedom of expression, there are regulations and limitations to the enjoyment of this right.

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Several laws have been made to guide the enjoyment of this freedom, however some of the laws may have limits that go beyond what may be democratically acceptable, or may go beyond the requirements of the Constitution

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<sup>2</sup> See article 19 of UDHR and 19 of ICCPR

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### **1.3 Which laws in Uganda guide the enjoyment of this right?**

Uganda has passed several laws that have an effect of limiting or affecting the enjoyment of freedom of expression. A number of laws that relate to management of formal media channels such as radio and newspapers have been put in place. Some other laws address the general public order, hinging on morals of society.

These laws provide for the administrative procedures for management of freedom of expression, while others provide for criminal and civil punishments for violation of this right.

Some of these laws include:

- a. The Press and Journalist Act
- b. The Uganda Communications Act, 2013
- c. The Computer Misuse Act
- d. Anti Pornography Act,
- e. The Penal Code Act, among others.

Some of the laws provide for limitations to the exercise and enjoyment of freedom of expression. Basically, the limits are that a person cannot exercise his freedom of expression, if through the exercise of such a right; it would result into the abuse of others' rights.

Generally the limitations can be through civil law actions and to a limited extent, criminal law. There are also administrative requirements that may limit the enjoyment of freedom of expression in Uganda.



## 1.4 Criminal Related Limitations of Freedom of Expression

The Penal Code Act (PCA) provides for a crime of criminal defamation.

Section 179 provides that:

“Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanour termed libel.”

From the above provision, the following must be fulfilled for the matter to succeed:

- a. There must be an unlawful publication (by print, writing, painting, effigy or other means). According to Section 182 such a matter must be false with no truth in it. However, where content is published in public interest, such content is not considered unlawful and cannot be defamatory.
- b. The content published must be defamatory. A defamatory matter is defined under Section 180 and includes any matter that is likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule or likely to damage that person in his or her profession or trade by injuring his or her reputation.
- c. Basically any content that can injure the reputation of a person, if that content is not true, can result into a charge of criminal defamation.
- d. There must be intent to defame the person. Intent is ordinarily gathered from circumstances of the case.

A person who commits criminal defamation is liable to imprisonment for a period not exceeding two years<sup>3</sup>

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3 S. 22 PCA

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Uganda believes the offence of criminal libel / defamation undermines the enjoyment of freedom of expression and should be ruled as so. However no court has pronounced itself as such and the offence remains in force in Uganda

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## **Civil defamation**

As already noted, a publication can result into civil or criminal action. Civil defamation arises from similar circumstances from criminal defamation.

Key issues for consideration in civil defamation are:

- a. There must be publication of a matter or information
- b. The matter published must be false
- c. The matter published must have the effect of lowering the reputation of a person among members of the public.
- d. The person must not have any of the available legal defenses of defamation such as justification, fair comment, privilege, public interest etc.

## **What is publication?**

For a case of defamation to succeed, some matter/information must be published. It therefore follows that where a matter has not been published or has only been shared with the person claiming to be defamed, it will not amount to defamation.

Publication has been ruled to be where the information is communicated to two or more people (beyond the person said to be defamed)<sup>4</sup>.

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use of social media and Internet can be considered a form of publication. Content posted on social media can amount to defamation

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It should be appreciated that publication can be oral or through other written means such as newspapers, cartoons, songs, videos etc.

Note that use of social media and Internet can be considered a form of publication. Content posted on social media can amount to defamation<sup>5</sup>

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4 See Teddy Szezi Cheeye and 2 Others vs. Emmanuel Tumusiime Mutebire and 2 Others - Supreme Court Civil Appeal No. 36 of 1995 - 6/13/1995

5 Uganda Vs Timothy Nyakahuma Kalyegira HCSC 1/13

## 1.5 What other criminal limitations exist in the Ugandan law?

Other offences created by the Penal Code Act in relation to freedom of expression include

- i. Prohibition of publication of information prejudicial to security  
This offence is provided for under Section 37 of the PCA. It prohibits publication of any information regarding military operations, strategies, troop location, or movement of troops or military supplies.
- ii. Promotion of sectarianism  
This offence prohibits printing, publishing or making any statement that is likely to degrade, revile or expose to hatred or contempt or create a feeling of ill will or hostility against a tribe, ethnicity or a religion<sup>6</sup>
- iii. Defamation of foreign princes  
This offence is similar to defamation only that it targets any kind of publication that tends to degrade or cause contempt of any foreign dignitary in Uganda without justifiable excuse.
- iv. Prohibition of importation of or distribution of prohibited materials  
Section 34 of the PCA gives a minister power to prohibit importation of certain materials in public interest. Once such materials are prohibited a person shall not be allowed to possess, distribute or sale such materials in Uganda.
- v. Chain letters  
This offence prohibits publication, distribution of a series of letters, resending a similar letter to a number of persons and asking persons to send money to an address in the letters. The punishment for this offence is six months imprisonment or a fine of four thousand shillings.

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6 See S. 41 of PCA

## 1.6 Are there any new laws with specific limitations?

The Anti-Pornography Act, 2014 is an Act created to prohibit the publication and distribution of pornographic materials. It should be noted that this law seeks to ban the distribution of such materials as opposed to regulating the distribution as it is in acceptable democratic societies.

The Act has a broad definition of what pornographic content is and it can include art, drama, culture, cinema, video etc. that shows sexual activities or sex content.

A person is punished for having made, or taken part in the making of, or publication of pornographic content. The focus of the law is on publishing and sharing of such content as opposed to those who produce it. It is this target on publication that undermines the freedom of expression.

Other limitations in the Act include the requirement for Internet Service Providers to monitor pornographic content, hence providing for surveillance and undermining the right to privacy. The law also gives owners of premises and Police officers powers to stop a public show such as art, drama or cinema where they deem it to be against the Act. This has a potential to violate the right to expression and assembly.

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# Freedom of Assembly and Association in Uganda

## **2.1 What is freedom of association?**

In its very basic form, freedom of association is the right to form and join groups of people. Such groups can range from different types, such as informal groups like a “malwa group”, a club, to formal organizations such as trade unions, NGOs, companies, partnerships among others. The groups can be started for any legal purpose.

The right includes the freedom for any member of the public to form or join any group of other people to carry out activities that they wish, provided the activities do not result in commission of crime. The right also includes an obligation on government not to limit the enjoyment of such freedoms by citizens.

## **2.2 What is the basis of this right?**

In Uganda, freedom of association is guaranteed under Article 29 of the Constitution and under international human rights instruments adopted by Uganda.

Article 29(1)(d) and (e) provide that:

1. Every person shall have a right to freedom to assemble and to demonstrate together with others peacefully and unarmed, and to petition.
2. Every person shall have freedom of association, which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

Government has over time made laws to facilitate the enjoyment of freedom of association. These mainly focus on the form of association and how people should associate. It should be noted that some of the laws facilitate freedom of association for various reasons while others limit the enjoyment of these rights.

Further, it is important to appreciate the dual nature of this right. 'Assembly' and 'Association' are usually used interchangeably. However, when reference is being made to demonstrations and gatherings for legal purposes, then 'Assembly' is the most appropriate feature of the right. Relatedly, where reference is being made to formation of groups and organizations, then 'Association' is the appropriate component of the right.

## 2.3 What facilitates the enjoyment of this right?

It should be noted that *freedom of association exists with or without the law facilitating it*. The purpose of the laws should be to enable smooth association, to avoid creating conflicts in society through such associations.

Most laws facilitating or governing the freedom of association in Uganda focus on enabling people associate for particular purposes. The freedom is exercised within particular limits. These can be categorized as political party and related activities, civic related activities and business activities.

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The Political Parties and Organizations Act, 2005 provides for regulation of political parties in Uganda. The Act seeks to regulate freedom of association

where such an association is meant for formation of political parties or organisations in Uganda. Every political party or organisation in Uganda should be registered and should conduct itself in accordance with this law and the code of conduct provided by the law. The law also provides for financing of political parties and how they can run their day-to-day businesses.

The Act emphasizes the right for every Ugandan citizen to form or join a political party or organization of his or her choice.

There is a prohibition to starting organizations that discriminate against people or organizations based on sex, color, race, ethnic origin, tribe, birth, creed or religion. The restrictions here include a requirement for a political party or organization to have a national character, not to use symbols that could result into division among other things.

The Companies Act and the Partnership Act on the other hand regulate business related associations. They provide for formation and running of business associations. The laws try to provide a balance between the freedom to associate in forming businesses and the need to regulate persons engaging in businesses from cheating unsuspecting members of society.

## **2.4 Similar to the right mentioned before, are there any limitations to the enjoyment of freedom of association?**

Freedom of association is not absolute; it can be limited in certain circumstances. Generally the limits to freedom of association should be those accepted within free democratic society.

However, this is not always the case as the freedom sometimes gets limited through laws that may undermine the enjoyment of this freedom, despite constitutional guarantees. In Uganda there are several laws that limit the enjoyment of this freedom. Below are some incidences where the law limits the enjoyment of this freedom

## Limitations to Freedom of Assembly and Association under the Penal Code Act

The Penal Code under Section 56 provides for unlawful society.

An unlawful society is a group of two or more persons who associate together if the purpose of that association is to plan for war against government of Uganda, if the purpose is to commit a crime, intimidation or incitement.

The law gives powers to the minister to declare a society unlawful and any person who becomes a member of such a society commits a crime. Critically, the broad nature of intimidation and incitement here gives a lot of room for abuse by the government, especially where groups of people associate to be critical of it.

The Penal Code also makes an offence situations where a society after being declared unlawful, continues to assemble and in the processes causes breach of peace; or where such an assembly is likely to cause fear among members of the community. The Penal Code punishes both the person organizing such an assembly and a person taking part in the assembly.

It should be noted that the provisions on unlawful assembly in the Penal Code have been subject to a constitutional court petition and court is yet to pronounce itself on the constitutionality of these provisions.

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## Limitations to Freedom of Assembly under the Public Order Management Act

The Public Order Management Act, 2013 (POMA) aims at providing for regulation of public meetings; providing for duties and responsibilities of Police and participants in public meetings and prescribing measures for safeguarding the public during public demonstrations. ***The Act has several provisions that limit the enjoyment of freedom of assembly and has been subject of a constitutional court case challenging its legibility and constitutionality.***

POMA defines a public meeting to mean a gathering, assembly, procession or demonstration in a public place conducted for purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest.

From the above definition, it is clear the meaning of a public meeting goes beyond a mere assembly of persons, but also focuses on what those people meeting are going to discuss. It limits public participation by prohibiting persons from assembling to discuss any matter of public interest.

Section 6 of the Act requires organizers of public meetings or demonstrations to inform the inspector of Police in writing of any public meeting they are planning to organize. The purpose is for the Police and the organizers to plan and ensure a peaceful public meeting where Police plays a protective role. However in practice Police has turned the requirement to inform them into a request for permission to hold such event.

The chief concern with this law is the fact that it grants power to the Police to stop a public meeting from happening; implicitly granting the Police the authority to stop persons from exercising their right to assemble. This is a restatement of an outlawed provision of the Police Act, which is used to frustrate peaceful public gatherings, particularly by the Opposition in Uganda.

## Limitations to Freedom of Association under the Non Governmental Organizations (NGO) Act, 2015

The NGO Act, 2015 was recently passed by Parliament but it is yet to be assented to by the President. *(It is important to note that the law was not yet in force at the time of publication of this booklet.)* The Act seeks to repeal and replace the NGO Act Cap 113 and regulate the NGO sector in line with the NGO Policy. It provides for the registration of NGOs and requirements for permits for NGOs.

***However, the law puts unnecessary control over persons who want to associate through NGOs by proposing criminal penalties<sup>7</sup> of up to three years in jail*** for violating vague and undefined ‘special obligations.’<sup>8</sup> For example, the special obligations require an organisation not to engage in any act that is prejudicial to the interests of Uganda or dignity of the people of Uganda. Who can define the dignity of all the people of Uganda? Such vague terms expose NGOs doing research and advocacy in areas such as corruption, human rights, land, governance, and sexual minorities to harassment and possible jail time for NGO staff.

The law further imposes a mandatory requirement for registration of people to exercise their freedom to associate as a group. Once registered such people are expected to get a permit to allow them to do what they were registered to do. The permit is renewable subject to certain conditions. This implies that an application can be denied. This is particularly problematic in view of the fact that it potentially prohibits, rather than facilitate the enjoyment of the right.

Once a permit is issued, the same group of people now in an NGO will be required to sign memoranda of understanding with local governments that they are going to work with.. The requirement for a memorandum of understanding (MOU) undermines the purpose for registration and association, which is done centrally. It also undermines the enjoyment of other rights such as the right to take part in civic activities of a country, since the local government may chose to refuse to enter into an MOU with the NGO.

<sup>7</sup> Section 40 of the NGO Act 2015

<sup>8</sup> Section 44 of the NGO Act 2015

The various layers of registration and authorization substantially limit the freedom of association by making it difficult to engage in organizational activities.

The other constraints include the requirement to submit reports to several reporting points such as the NGO Board, the district technical committee, the district council, the district monitoring committee etc. This unnecessary duplication of reporting makes it difficult for NGOs to freely operate. It will result in wastage of resources, and reduced engagement since all the respective governmental departments, will require more emphasis on delivery of these documents.

## Limitations to Freedom of Association under the NGO Act Cap 113

At the time of publication of this booklet, NGOs in Uganda were regulated under this law. This is the law that the NGO Act discussed above seeks to repeal and replace.

Briefly, some of the key barriers under this law include mandatory registration, which prescribes penalties for conducting activities through unregistered organizations. The registration process is not only cumbersome, but also lacks procedural safeguards with the NGO Board holding broad powers to refuse to register an organization.

Further, the law places restrictions on purposes and activities during and after obtaining registration status. The law, additionally, provides for involuntary dissolution, which may be based on vague and subjective grounds.

## 2.5 Protesters and the Bill of Rights in the Constitution

The Constitution of the Republic of Uganda of 1995 as amended, which is the supreme law of the country, provides for Uganda’s Bill of Rights under Chapter Four. The Bill expressly seeks to protect fundamental rights and freedoms from being violated.

Under the Constitution, protesters are entitled to assert their fundamental rights and freedoms and can demand that the government and relevant State officials respect these rights. However, in practice, many protesters are usually subjected to repressive actions especially from the Police while exercising their rights and freedoms.

Article 29(1)(d) of the Constitution protects your ‘freedom to assemble and to demonstrate together with others peacefully and unarmed, and to petition.’

During a protest, the demonstrators can distribute information about the protest in any way as long as the information being distributed is not war propaganda or promoting an illegality.

It is however important to note that although the freedom to assemble and associate is guaranteed by the Constitution, the government has power to limit these rights under certain circumstances as detailed above. More fundamentally, Article 43(2)(c) instructs that any limitation of the enjoyment of these fundamental rights and freedoms must be ‘what is acceptable and demonstrably justifiable in a free and democratic society’ and abide by the principles of equality, freedom, and human dignity.

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## **Conclusive Remarks**

The freedoms of expression and assembly are very much a part of our everyday life. They are also critical in enabling positive and constructive discourse on matters in the country. It is important that every person in Uganda understands these rights and exercises them to the best of their ability. It is in the exercise of these freedoms that the challenges highlighted above will come to the fore.

With the challenges comes the opportunity to advocate for positive legislative development. It is the duty of every Ugandan to demand for better laws and for the proper enjoyment of their rights. It is important that every Ugandan is empowered with this information to promote a free space for discourse and engagement in the country.

It is your right to speak; it is your right to associate with those with whom you share similar aspirations. Seek to defend these rights, to promote a free and democratic society in Uganda. With the harnessing of these enabling rights, the transformative impact on the country will build a positive space for bold and constructive engagement.





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